

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES - AUGUST 21, 2002**

CALL TO ORDER

Mayor/Chairperson Kennedy called the meeting to order at 5:02 p.m.

ROLL CALL ATTENDANCE

Present: Chairman/Mayor Kennedy, Council/Agency Members Carr, and Tate
Arriving Late: Council Members Chang and Sellers

DECLARATION OF POSTING OF AGENDA

Office Assistant II Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

City Council and Redevelopment Agency Action

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced the following closed session item:

CLOSED SESSION:

1.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Manager

Attendees: City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the closed session items to public comment. No comments being offered, the public comment was closed.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 5:04 p.m.

RECONVENE

Chairman/Mayor Kennedy reconvened the meeting at 7:10 p.m. All Council Members were present.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that there was no reportable action taken in closed session, and that closed session would continue after the regular meeting.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairperson Kennedy, Teri Nelson of the YMCA led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy declared August 24, 2002, National Gymnastics Day and presented this proclamation to Mr. Tharien Bramhall and several members of the Morgan Hill Gymnastics Club. Morgan Hill Gymnastics Club is celebrating its sixth year of offering gymnastics programs to the community, and is working with the National Association of Children's Miracle Network Hospitals and the Network of State Fitness Councils to raise community awareness for the need to support athletic and gymnastic programs in schools.

Mr. Bramhall spoke about the vision to create more awareness of physical fitness in the community with the goal to install the sport of gymnastics back into the Morgan Hill Unified School District. He stated that they want to give kids the best opportunity possible to be fit and compete in gymnastics.

Mayor Kennedy proclaimed September National Alcohol and Drug Addiction Recovery Month as an opportunity for individuals in the substance abuse treatment community to educate the public and policymakers about the effectiveness of treatment, both societal and financial. Substance abuse is a treatable disease and treatment of addiction is as successful as the treatment of other chronic diseases such as diabetes, hypertension, and asthma. There are thousands of health care providers who have dedicated their lives to the recovery process and to the education of the public about alcoholism, drug dependence, and the treatment issues. Mayor Kennedy invited all residents of Morgan Hill to participate in National Alcohol and Drug Addiction Recovery Month.

CITY COUNCIL REPORT

Council Member Chang reported that South County Regional Wastewater Authority (SCRWA) will be ready next month to do the first phase of the wetland presentation to the Regional Board; and that it will require three presentations in order to be able to apply for a permit. Currently set for September 20.

Council Member Chang also announced the October 12 BBQ fund-raising event for the Day Worker Center. She stated that this is not a City-sponsored event, but that all the Council Members are involved on a personal volunteer basis. Invited the citizens of Morgan Hill to purchase tickets and support this worthy fund-raising effort.

CITY MANAGER'S REPORT

City Manager Tewes stated that it is the 8th week without a State budget being passed, and that there is no indication of when it will be approved. He reported that there is some concern for the city budget because it was based on assumptions of anticipated revenues being at prior year's levels, but

until the budget passes there is no way to know how much we will actually be receiving.

City Manager Tewes then introduced the acting City Attorney for tonight's meeting, Sandy Sloan. She is serving at tonight's meeting while Ms. Leichter is on vacation.

He also mentioned the upcoming "Family Movie Night Under the Stars" being sponsored in part by Leadership Morgan Hill. This event is free and will be held August 24 starting at 6:30 p.m. at Britton Middle School, with the movie showing at 9:00 p.m. He extended an invitation to everyone to attend this event.

CITY ATTORNEY'S REPORT

No report.

OTHER REPORTS

Youth Advisory Committee (YAC) Chairperson Billy Lewis reported to the Council on the upcoming Fund-raiser planned for 11:00 a.m. to 10:00 p.m. on August 25, 2002, at Chevy's Fresh Mex restaurant in Gilroy. Chevy's has agreed to donate 20% of the total bill for lunch or dinner from any customer who presents a YAC fund-raiser flyer. He invited all Council Members and the public to participate in this fund-raiser and support the YAC.

PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the floor to comments for items not appearing on this evening's agenda.

No comments being offered, public comment was closed.

CONSENT CALENDAR:

Action: *At the request of Mayor Kennedy, Item 5 was pulled for discussion; and at the request of Council Member Sellers, Item 10, was pulled for discussion. Item 16 required a separate vote.*

Action: *On a motion by Council Member Tate, and seconded by Council Member Carr, the Council unanimously approved (5-0) Consent Calendar Items 1 through 4, 6 through 9, 11 through 15, and 17, as follows:*

1) **YMCA FRIENDLY INN LEASE AND SENIOR CENTER OPERATOR
CONSULTANT AGREEMENTS**

Action: *Authorized the City Manager to Execute a Contract in the Amount of \$75,000 for the Operations of the Senior Center, subject to City Attorney Review and Approval; and **Entered Into** a Lease for the Use of the Friendly Inn With the YMCA.*

2) **APPROVAL OF POLICE RADIO CONSOLE REPLACEMENT**

Action: *Authorized the Replacement of Police Radio Console Equipment With the*

Motorola Centracom Elite From Motorola.

3) **APPROVAL OF COPY MACHINE LEASE FOR POLICE DEPARTMENT-RECORDS**

Action: ***Authorized** the lease of a Xerox DC440AS Digital Copier System Through Precision Document Systems, Inc.; and **Declared** the Sharp SF2040 Copier (Serial Number 76202461) Surplus and **Authorized** Disposal by Purchasing Officer*

4) **APPOINTMENTS TO MOBILE HOME RENT COMMISSION**

Action: ***Approved** Mayor Kennedy's Appointment of Charles Dillmann, Robert Graham, and John Liegl to Serve on the City's Mobile Home Rent Commission With Terms Expiring June 1, 2004.*

5) **SUPPORT FOR TEACHER'S AID PROJECT**

At the request of Mayor Kennedy, Council Member Tate reported on this item. He stated that this project was started about four years ago by Dr. John Hatakayama to provide support to teachers for supplies that are not covered by the school budget. Teachers usually pay for these items from their own pockets, and the cost can run as high as \$1,400 a year. These items include things like kleenex, extra art supplies, and so forth. Dr. Hatakayama started collecting these items from citizens and businesses who had extra supplies to donate to the schools, and the project has grown over the years to a partnership with local businesses and citizens to provide these supplies. Several community members are now involved with the steering committee for this proejct. The intent of this agenda item is to get the City involved in this project to aid them in this endeavor.

Council Member Tate invited citizens to become involved as well, by delivering to Dr. Hatakayama's office (Phone number: 779-7391) any donated supplies that could be used by the students; or by donating money toward the cost of these supplies at Jody's Junction Stationers.

Action: *On Motion by Council Member Tate, and seconded by Council Member Carr, the Council unanimously **approved** (5-0) Consent Calendar Item #5, to Officially Co-Sponsor the Teacher's Aid Project*

6) **SUBDIVISION APPLICATION SD 02-03: HALE-GLENROCK/SHEA**

Action: ***Took No Action**; Thereby Concurring With the Planning Commission's Decision Regarding Approval of the Subdivision Map.*

7) **REJECTION OF BID FOR PUBLIC WORKS OFFICE EXPANSION PROJECT**

Action: ***Rejected** the Bid Received on July 11, 2002 For the Public Works Office Expansion Project.*

8) **PUBLIC WORKS MAINTENANCE CONTRACT FOR REPAIR AND MAINTENANCE OF TELEMETRY SYSTEM**

Action: ***Authorized** the City Manager to Execute Contract with Telekey SCADA Systems, Inc., subject to City Attorney Review and Approval.*

9) **AMEND PROFESSIONAL SERVICES CONTRACT FOR DESIGN OF TENNANT AVENUE WIDENING**

Action: ***Approved** Professional Service Agreement Time Extension; **Approved** the Additional Scope of Work From MH Engineering in the Amount of \$8,610; and **Authorized** the City Manager to Execute an Amendment to the Existing Professional Services Agreement for Design Services for the Tennant Avenue Widening Project, With the Total Amended Professional Services Agreement not to Exceed \$42,410.*

10) **COMMUNITY AND CULTURAL CENTER PROJECT JULY CONSTRUCTION PROGRESS REPORT**

Council Member Sellers asked if the project is expected to be completed in time for the planned Grand Opening Celebration.

Director of Public Works Ashcraft responded that, while there are things that are out of the control of Public Works, it is his belief that the project will be completed on time.

Project Manager Ritter stated that the current date of completion is projected to be November 2, but that it could be as much as 3 weeks later; although DPR is working hard to reduce that three week delay. He stated that he definitely expects them to be completed by the end of November. He stated that the Playhouse will not be completed until December 4.

Mayor Kennedy thanked the Public Works staff for their work on this project and noted that he is constantly receiving compliments from citizens who are pleased with the speed of the project.

Action: ***Information** Only.*

11) **JULY 2002 FINANCE AND INVESTMENT REPORT**

Action: ***Accepted** and **Filed** Report.*

12) **APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF JULY 30, 2002**

13) **APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF AUGUST 2, 2002**

14) **APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF AUGUST 7, 2002**

City Council and Redevelopment Agency Action

15) APPROVED SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JULY 31, 2002

City Council Action

16) REJECTION OF BIDS FOR WELL ABANDONMENT PROJECT

Council Member Chang recused herself from voting on this item due to a property conflict.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the Council, on a 4-0 vote, with Council Member Chang recusing herself, **Rejected** the Single Bid Received on July 31, 2002 for the Well Abandonment Project and Authorize Staff to Rebid the Project.*

17) ACCEPTANCE OF DONATIONS FOR GALVAN PARK BASEBALL FIELD IMPROVEMENTS

Action: ***Accepted** Donation by Silicon Valley Baseball of Improvements For the Galvan Park Baseball Field; and **Presented** a Certificate of Appreciation Acknowledging the Donation.*

Deputy Director of Public Works Struve introduced Dave McPherson of Silicon Valley Baseball, whose team has been playing on the Galvan Park baseball field for two seasons. This organization has provided the improvements to the field during this summer at a cost of approximately \$5,700.

Mayor Kennedy presented Mr. McPherson with a Certificate of Recognition for the donation of the improvements to the field, and thanked him for this work.

Mr. McPherson responded by thanking the staff for working with them on this project to make it a success, and stated that he hoped to continue working with the City on improvements over the coming year. He thanked the City for providing a place to play the game.

PUBLIC HEARINGS:

18) ANNEXATION APPLICATION ANX-00-02: COCHRANE-LUPINE

Director of Community Development Bischoff presented the staff report. This application is a request to annex two parcels totaling 55 acres in size (46 ac. and 9 ac. each) into the City of Morgan Hill. The properties are located at the southeast corner of Cochrane Road and Peet Road.

The 55-acre site is currently surrounded on three sides by the City of Morgan Hill. Therefore, inclusion of the parcels into the City limits would represent a logical adjustment of the City's boundary. In addition, under the terms of the 1984 Cochrane Road Assessment District (CRAD) court judgement, the City agreed to accept and process, to an approval, applications for annexation and prezone within the CRAD area. The subject site is located within the City's Urban Service

Boundary, and in February 2001, was rezoned R-1(12,000) Single-family Low Density Residential. Existing water and sewer lines are available within the site vicinity, and are of sufficient size to service future development of the site. The subject site is also within the established response time standard for fire service. Considering the proposed annexation represents a logical adjustment of the City's boundary, and City infrastructure and services to the area are available, staff supports the annexation.

On December 12, 2000, the Commission voted unanimously (7-0) to recommend approval of the annexation. The annexation was not forwarded to the Council until the annexation map and legal description was certified by the County Surveyor's Office and County Assessor's Office, and until all code violations had been removed. Since that time, certification of the map and legal description was received by the City, and all identified code violations have been remedied. The applicant has also entered into a Pre-Annexation Agreement with the City.

Mayor Kennedy opened the public hearing.

Mr. Dick Oliver, representing Lupine investors, introduced himself and told the Council he was available to answer any questions.

Action: *On a motion by Council Member Tate, seconded by Council Member Sellers, the Council unanimously (5-0) **Adopted** Resolution No. 5608, For Annexation.*

19) APPEAL OF SUBDIVISION APPLICATION SD 01-04: McLAUGHLIN-JONES

Action: *Due to withdrawal of appeal request by applicant, this item was dropped from the agenda. No action was taken.*

20) DEVELOPMENT AGREEMENT AMENDMENT DA 02-03: HALE-GLENROCK/SHEA

Director of Community Development Bischoff presented the staff report. The applicant is requesting approval of development agreement that will cover the development commitments for an 11-lot portion of the 68-acre Capriano development located on the south side of Tilton Ave., east of Hale Ave. and west of Monterey Rd.

In May 2002, the Planning Commission awarded 11 allocations for FY 2003-2004 which will be the beginning of Phase IV of the project. Phase IV will cover a 3.25 acre area within the overall 68-acre project site.

In accordance with established City Council policy, all residential projects awarded building allotments through the Residential Development Control System must secure City Council approval of a Development Agreement. The purpose of this agreement is: to secure commitments made during the Residential Development Control System process, and to establish a development schedule and mechanism for monitoring project success. Special attention is directed to Paragraph 14 of the Agreement which addresses the developer commitments made during the 2001 Residential Development Control System process. Exhibit "B" of the agreement sets forth the due dates for actions prior to construction.

This application was reviewed by the Planning Commission at its July 30, 2002, meeting. The Commission voted 6-1, approving the request. The Planning Commission staff report and minutes are attached for the Council's reference.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers, seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance 1582, New Series.*

Action: *On a motion by Council Member Sellers, seconded by Council Member Tate, the City Council **Introduced** Ordinance 1582, New Series by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING OF A DEVELOPMENT AGREEMENT, DA-02-03: HALE-GLENROCK/SHEA FOR APPLICATION MP 01-04: TILTON-GLENROCK (APN's 764-09-026 & 027) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None .*

21) DEVELOPMENT IMPACT FEE ADJUSTMENTS

Director of Finance Dilles presented the staff report. On May 22, staff and the City's consultant, Maximus, presented proposed changes to development impact fees for General Government Facilities, Libraries, Traffic, Police, Fire, Parks, Local Drainage, Sewer, and Water. Staff recommends that new fees for Community & Recreation Centers and for Open Space not be adopted at this time and that staff return within one year with more detailed information concerning how to fund the Sports Complex (Sports Fields). It is also recommended that the Library fee not be updated at this time, pending the outcome of the City's Prop. 14 grant application.

On June 26, 2002, the City Council opened a public hearing on proposed fee adjustments and continued the public hearing on development impact fees until July 17; at which time, the public hearing was again continued until August 21. In response to City Council direction, Exhibit A to the Resolution was amended to reflect adjustment of fees evenly over a 3 year period. Staff recommends that the first adjustments be implemented as of 1/15/03. Since the phase-in approach is now proposed, staff has deleted the previous recommendation to allow prepayments.

Staff has reviewed the City Council's direction to return with information regarding "locking in home builder projects at the vesting tentative map or something that could work better (flexibility), payable at occupancy." Past and planned development agreements for residential projects processed through Measure P include the following: "The City shall be entitled to impose development fees and apply building standards which are in effect at the time the building permits are actually issued rather than those effective as of the date of the agreement." Therefore, this contract language establishes fees when building permits are issued; and fees are paid at occupancy. The effect of this language is to reduce fees collected under any option by an estimated \$1.5 million. The City's estimated cost, in fees otherwise collected, for implementing adjustments under varying assumptions would be ***one*** of the following options:

- 1) Implement new fees 1/15/03, with no developer assistance: \$1.5 million *or*
- 2) Residential & commercial prepayments with no phase-in: \$5.4 million *or*
- 3) (*Recommended*) 3 year phase-in for commercial & residential with no prepayments: \$4.1 million
or
- 4) 3 year phase-in with residential & commercial prepayments by 1/6/03: \$4.6 million

In addition, in response to Council direction, staff recommends that the City allow applicants to pay existing fees for sewer & traffic impact fees for shell buildings, "finaled" as of 1/6/03, when the improvements are installed, if installed prior to June 2004. This action could cost the City \$1 million more in lost fees.

As proposed, the total impact fees for a single family home would increase by 54% from \$13,550 to \$20,846. An additional \$600 increase for the 3.8% January 2003 engineering cost index adjustment would bring the total to \$21,446, as shown on Exhibit A. Included in the agenda packet are two consultant reports concerning fees and an Ordinance changing the timing of the engineering cost index adjustment from each July to each January.

The amount to be collected from future development, as projected until build out, for the 8 impact fees with adjustments would be nearly \$195 million. However, this amount could be reduced by as much as \$6.4 million, if all eligible projects took advantage of potential payment options. This shortfall would need to be picked up by other funding sources and could not be charged to future development.

Mr. Dilles presented the Council with a chart showing a comparison of Morgan Hill's proposed fees to Gilroy's recently adopted fee structure. He noted that Morgan Hill's fees are still significantly lower than the fees being charged by the City of Gilroy.

He reviewed an Impact Fee Revenue Chart, and noted that the calculated losses displayed are estimates, but since he did not want to understate the potential loss, they are maximum estimates. He stated that he believed the worst case loss to the city would be 6.4 million dollars.

Director of Community Development Bischoff displayed a chart that displayed a typical residential development time line to give the Council an overall sense of the sequence of events and the amount of time required; though individual projects would vary somewhat. He stated that from start to finish the time is two to two and one-half years. If fees are fixed at the time of vesting tentative map at around 11 months, versus at the time of issuance of building permits at around 24 months, this would cause revenue to decrease by about 13 months worth of increases.

Council Member Sellers asked what difference this would make in a per unit cost.

Finance Director Dilles stated that he estimated that the first year increase would be \$1,764 plus \$581 inflationary effect, for a total of about \$2,300 per unit. This inflationary increase occurs each year, but would be changed from a fiscal year to a calendar year. This would not change the index, but it would be applied at a different time of year.

Mayor Kennedy opened the public hearing.

Mr. Chris Carrigan, representing the Tharaldson Family Development Company, expressed appreciation and thanks to staff for their courtesy and professionalism. He stated he strongly supports the option of a 3 year phase-in and pre-payment option, as that is the easiest for the staff to administer. He stated he wants to make it easy on staff and support this option. His clients would not oppose this fee as long as council continues in the direction they have taken. Stated he feels staff report accurately clarified this issue; and the losses that have occurred because it was not implemented in January, can be regained over time. Since this is only about 3 percent of the overall fee, it is not a significant hit.

Mr. Carrigan stated that because of the economic slow down, he does not believe the community is going to be developing a lot of new projects in the near future, but feels the phase-in will serve to help with the economic "pump priming process". He strongly urged the Council to adopt both the three year phase in and the pre-payment option.

Mr. Bill Schworer, Project Manager of Pacific Union Homes, stated he felt that the staff presentation was a fine one, but that Pacific Union Homes would like to have an allowance for pre-payment. Because the market is slow, and they cannot build houses until they are able to sell them in this slow market, would like to see the Council enact a phase in, but feels that there should be provision for grandfathering and pre-payment of fees.

Ms. Sunday Minnich, representing the Morgan Hill Chamber of Commerce, stated that staff has been very helpful in assisting them in understanding the study and being available to answer questions. Thanked the Council and staff for being so thoughtful in the process during the down economy. As a result of Chamber of Commerce meetings with the commercial and industrial developers in Morgan Hill, the Chamber supports a phase in effective in January for the next three years, and also an 18-month extension for the existing shell buildings with fees payable upon occupancy. She also stated they support the home builders in Morgan Hill and their recommendations submitted to the Council by letter.

Mr. Rocke Garcia, local developer, commented on the time line scenario presented by Mr. Bischoff. Stated he would like to see fees set at the vested tentative map stage to avoid confusion because fees could potentially be different for each building permit that is pulled because they can be pulled at different times. Stated that he feels that it would be easier for the builder because it would set the fee.

Ms. Jennifer Cloonan, representing the Homebuilders Association of Northern California. Stated she appreciated the efforts of staff to respond to the concerns of the homebuilding community regarding how these fee increases will affect builders and home buyers. Stated support of staff recommendation of phasing in the proposed increases over a three year period. Also grandfathering previously allocated, but not yet built units, would also be appreciated. Also requested that the Council support the preference of Morgan Hill homebuilders to have their fees locked in at vested tentative map approval, and to pay the fees upon occupancy of the unit. Stated she feels that loss of revenue in the staff report is exaggerated. Stated that homebuilders are ready and willing to pay their fair share for the future infrastructure needs, even if it means increases.

Mr. Dick Oliver, developer, stated he felt the \$1.5 million loss back to January 2002 is artificial because it cannot be retroactively be imposed. He stated that staff report suggests that there be a 3.8% increase in the fee as of January 15, 2003, and he does not understand the logic of this increase by this percentage on the very day the fee is increased, and felt that this may be a double dipping of some kind; but is not sure quite why that is. Stated his support for setting the fee at the vesting of tentative map and the three year phase-in to lessen the burden on his current project.

Ms. Carolyn Hipp, representing Warmington Homes, spoke in reference of Morgan Lane project. Asked the Council to support the phase-in of fees, which seems to benefit both public and private entities. In addition, encouraged lock in of fees at vesting of tentative map, and this seems a logical and appropriate point of timing to impose a fee. Also requested the option to pre-pay fees if a developer would so choose.

No further comments being offered, the public hearing was closed.

Council Member Chang asked what is the timing of other cities in Santa Clara County as to charging at tentative map stage or at the building permit time.

Mr. Dilles stated that he only has certainty about the city of Gilroy, and that they have adopted resolution with a new fee schedule which contains the following two exceptions: 1) commercial and industrial projects for which complete building and off site plans had been submitted and deemed complete by the city; and 2) for residential projects for which complete off site plans and a final map have been submitted and deemed complete by the city. Stated that the final map comes later than the tentative map; normally four to six months in advance of building permits. This resolution appears to set the fees but does not address the timing of payment.

City Manager Tewes stated that unless a project is developed pursuant to a development agreement, the typical case is that fees are locked in when the application for a vested tentative map has been submitted. However, in communities such as Morgan Hill, where development agreements are the norm, then the community has the right to establish a different date. So the norm is at the vesting tentative map stage for other communities, but the norm in Morgan Hill has been that the calculation of the fee be more closely associated with the actual development of the unit since the impact created by the unit comes later. This assures that when the impact arrives that the fee is established at a rate closest to matching the mitigation measures needed for those impacts. Stated that the Council does have the authority to change it if they wish. The economic impact would be best demonstrated by the chart shown earlier by Mr. Bischoff. If a line were drawn right in the middle of that time line, which would be about January when the rates would change; and to the left of that line would be the vesting tentative map stage, and to the right would be an extra \$2,500 dollars per unit, which is more than can be earned on a pre-paid amount.

Council Member Sellers asked if the issue is not really financial so much as making it a cleaner and clearer process, so what would change if we went to the vested tentative map stage for setting the fees?

Mr. Tewes responded that developers are seeking the most clarity at the earliest stage of the process. Under the proposed program, there is clarity into the future for the first three years by adoption of

a schedule that specifies the fees applicable in each succeeding period. The potential uncertainty in the future is the extent to which the cost of construction index will change, but that is an acceptable level of risk. Uncertainty arises in that every 5 to 7 years the City will do a comprehensive review and determine if the construction cost indexes actually did reflect the actual cost increase of land and construction.

Mayor Kennedy asked if fees are typically paid in other communities at the time of vesting tentative map stage.

Mr. Tewes responded that State law governs this, and fees are payed at the time of occupancy for residential. Council can establish appropriate rules for payment by commercial and industrial projects. The City wants to make sure that the impact of new development is matched to when the fees are paid; but tonight the Council has seen proposals to make that gap wider.

Council Member Carr stated that if he heard correctly, the issue about the tentative map is not one about the dollar amount, but about the simplicity and having all the fees the same. That if permits are pulled at different times for units in a project, they could have different fees charged, and make it difficult to keep track of which unit had how much fee. Stated that if fees were locked in at vested tentative map than every unit on that map would have the same exact fee; but if the fees are locked in at the time permits are pulled, then each permit that is pulled could have a different fee. Can a structure be developed that the fee is closer to time of occupancy so fee is close to time of impact, but that the fee is consistent for each unit.

Mr. Tewes responded that it is up to the Council to determine when they wanted to establish and lock in the fees.

Council Member Chang stated that her overall concern is the loss of \$1.3 million. She agreed with Council Member Carr's suggestion, but stated the City needs to make up the loss of these funds. She stated that she would like to adjust fees accordingly so there is not a loss of \$1.3 if the Council agrees to go with the vested tentative map stage for fees.

Council Member Tate agreed with Council Member Chang, but stated he is able to see both sides of this issue, where the developer wants to know his costs. Stated he does not necessarily agree that the developer could not plan so that the costs would not be inconsistent.

Mayor Kennedy raised the prepayment issue and asked, if the developer were given the option to prepay for all of their units at the time of vesting map, would the time value of money make up for the lower rate?

Mr. Tewes responded that the rate of return would be 3% versus 21% rate of increase in the next year would not be a good return. He stated that he would be very surprised if a developer prepaid residential fees at the vesting tentative map; because most developers don't receive their financing until the final map stage.

Mr. Dilles explained that the \$1 million for shell buildings is not included in any of the four options presented by staff in the report, and that it should be added on to any one of these scenarios. He also

explained that the 3.8 percent increase in January 2003 reflects the switch from fiscal year to calendar year application of inflationary index, changing it from July to January; and is actually being applied 6 months later than it would have been applied in the past.

Council Member Tate stated that he is not in favor of pre-payment option, and is in favor of phasing. On the question of the vested tentative map versus final pulling of permits, though he could argue on both sides of that issues, but felt that Mr. Garcia made a good point when he demonstrated the time line and showed how much time is spent on paperwork aspects of a project. He agreed that \$1.3 million is a lot of money to give up, but that is the worst case; and felt that he could favor doing it at the tentative map stage to give the developer something firm that can be planned on.

Council Member Tate made a motion to adopt staff's Option 3 without the pre-payment option, applied to residential development only, and with the establishment of fees at the vested tentative map stage.

Council Member Sellers seconded that motion, stating that the \$1.3 million would only be about two-thirds of a percent of what will be collected over the course of this agreement, and that would be the worst case scenario.

Mr. Dilles asked for clarification on whether to apply the engineering cost index each year in January.

Council directed staff to apply the engineering cost index each year as it comes due in January. That this is an expense the developer can easily build into his planning.

Council asked the Acting City Attorney for clarification on whether the motion applied to the resolution or the ordinance.

Acting City Attorney Sloan stated that the motion applies to resolution.

City Manager Tewes further clarified that the motion would have the effect of adopting the rates listed in the resolution; and also directing staff to prepare a change to the Municipal Code to adopt the establishment of fees at the vested tentative map stage of the process.

Council Member Carr stated that he is still concerned about the prepayment option. He stated that because of the time period between application for Measure P and the time the project starts to build there are projects in the pipeline now that may result in many extensions to projects being brought before the Council. Would like to see those developers who want to pre-pay given the option so they can rely on their original business assumptions.

Council Member Chang questioned why a builder would want to pay now, when they can keep the funds to earn interest and pay later, after locking the cost at vested tentative map. Stated that this would benefit the developer more than the city, and again expressed her concern at the loss of the \$1.3 million. Stated that there is no other place to obtain these funds, and she is very concerned about the loss. She is willing to compromise and allow for pre-payment if that would help with this problem.

Council Member Sellers called for the question.

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the Council voted 4-0-1, with Council Member Chang abstaining, to adopt staff recommendation number 3, applied to residential development only, without a pre-payment option, and with establishment of fees at the vested tentative map stage.*

Action: *On a motion by Council Member Tate, seconded by Council Member Carr, the City Council unanimously (5-0) approved the motion to adopt the staff recommended action regarding shell buildings to allow applicants to pay existing fees for sewer and traffic impact fees for shell buildings, finalized as of January 6, 2003, when the improvements are installed, if installed prior to June 2004.*

Action: *On a motion by Council Member Tate, seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance 1581, New Series.*

Action: *On a motion by Council Member Tate, seconded by Council Member Sellers, the City Council **Introduced** Ordinance 1581, New Series by Title Only as follows: an Ordinance of the City Council of the City of Morgan Hill Amending Sections 3.56.050 of Chapter 3.56 (Development Impact Mitigation Fees) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill Regarding Development Impact Mitigation Fees by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None: ABSENT: None .*

Acting City Attorney Sloan pointed out to the Council that Section 4A of the resolution addresses phasing, and Section 4B addresses the shell building issue. She stated the she and the City Manager wanted to point out that there is a small pre-payment allotment for those applicants who have been awarded Measure P allocations.

City Manager Tewes clarified that Section 4A deals with only a very small sub-set of the issues the Council has been debating this evening. This applies to only those projects which have already received Measure P allocations by a certain date. The debate this evening has dealt with the question of extending the pre-payment option into the future. This resolution reflects prior Council direction to allow pre-payment for this small sub-set. If they receive extensions, then they would be required to pay at the building permit stage. He stated that he assumes that there will be direction to the staff to come back with amendments to the Municipal Code.

Mayor Kennedy responded in the affirmative.

Action: *On a motion by Council Member Tate, seconded by Council Member Sellers, the Council unanimously (5-0) **Adopted** Resolution No. 5592.*

Action: *On a motion by Council Member Tate, seconded by Council Member Sellers, the Council unanimously (5-0) **Directed** Staff to Return to City Council Within One Year Concerning the Library Impact Fee and Options to Fund the Sports Complex (Sports Fields).*

Action: *On a motion by Council Member Tate, seconded by Council Member Sellers, the Council unanimously (5-0) **Directed** Staff to Return to City Council by January 2007 to Begin New Review of Impact Fees.*

Action: *On a motion by Council Member Tate, seconded by Council Member Sellers, the Council unanimously (5-0) **Directed** Staff to Return to City Council with amendments to the Municipal Code to implement Council direction determined this evening on the setting and collection of impact fees.*

City Council Action

OTHER BUSINESS

22) REQUEST TO FUND A STUDY TO IDENTIFY THE CITY'S NATURAL RESOURCES AND TO RECOMMEND PRESERVATION METHODS

Recreation Manager Spier presented the staff report. At the June 18, 2001 meeting of the Parks and Recreation Commission (PRC) a presentation on preserving local natural resources by Mark Grzan and Commissioner Puder was received. The PRC referred this item to the Bicycle Advisory Committee (BAC) for consideration of trails within the scope of the committee and to consider the need for funding a natural resources study; explore impact and revisions within the Measure P process which may address natural resource issues; for recommendation back to the PRC.

In July 2001, the BAC agreed to change their scope and expand their name to Bicycle and Trails Advisory Committee (BTAC). The BTAC scope now includes trails and natural resources. The BTAC participated in a field trip led by Mark Grzan and Commissioner Puder and discussed a scope of study. In Sept. 2001 the BTAC approved a scope of work for a "Trails and Natural Resources Study" attached memo. This item was discussed at the Nov. 20, 2001 meeting of the PRC. The PRC had some issues for the BTAC to consider. At the January 29, 2002 PRC meeting they agreed with the BTAC's scope and recommended a study to Council to determine types of appropriate use of trails; design guidelines for trails; and to provide a mechanism by which developers can/should contribute to trails. The study does not include natural resources such as flora and fauna issues. In February 2002, staff was faced with a 5% budget reduction and determined that this item would be brought before Council after the budget discussions were complete.

The recommendations are based on the BAC's Bikeways Master Plan. The following findings support the study: A. The City should focus its recreation resources on providing active recreational facilities, along with projects that preserve scenic resources and improve trail access within the community. B. A system of walking and bicycling trails is desired by the community, especially along the City's creeks and drainage channels. C. Recommendation to enhance partnerships with the Santa Clara Valley Water District to develop trails and linear parks along existing creeks and drainage channels. Recommended trails are included in the Draft Bikeways Master Plan. D. Goal is to include a comprehensive and coordinated system of bicycle paths, lanes and routes that serve as a safe and viable transportation and recreational network connecting neighborhoods, schools, parks and recreation facilities, work places, the library, civic center and other community facilities, and regional trails.

Based on these recommendations, potential funding sources, and compatibility of bicycles and trails; staff is requesting that Council consider the need for supporting a natural resources (creeks and trails) study and to explore revisions within the Measure P process which may address natural resource issues.

Funding of \$20,000 for this study is not budgeted. Staff, if directed, could explore funding alternatives such as grants and report back to Council.

Mayor Kennedy stated that he has been riding his bike on the Coyote Creek trail, and sees a lot of disconnects in the trails; and that he would like to have the trails connect so that riders can get from the Coyote Creek Bikepath to downtown. He stated he was strongly in support of this study and would like to expand it to include signage similar to what Council Member Tate put together to welcome and direct bikers and pedestrians to the downtown area.

Council Member Carr agreed and stated that there are dollars to be found. Suggested that perhaps Valley Transit Authority and the Water District dollars can be used in partnership to get this done. He stated that in the future this type of item should be included in the budget discussion.

Council Member Tate stated that a partnership with the Water District to develop the trails and linear paths along existing paths and creeks was part of the bond measure that was passed last year or the year before. He stated that the funds are there, and the Water District staff is interested in pursuing this issue. He also stated he would be interested in participating.

Mayor Kennedy requested that the Bicycle and Trails Committee study the weaknesses in the bike paths, such as narrow areas where city trails are connected to county roads for short distances. Suggested that perhaps those areas could be widened to make it safer.

All Council Members affirmed their support for this item.

Action: **Provided** *Direction to Staff on Funding Sources for a Study to Complement the Bikeways Master Plan.*

Action: **Provided** *Comments to the Scope of the Proposed Study.*

23) COMMUNITY CENTER AND PLAYHOUSE RENTAL FEES AND SCHEDULING PRIORITIES

Recreation Manager Spier presented the staff report. At its July 31, 2002 meeting, City Council provided input to staff regarding various facility rental policies and fees. This information is being incorporated into various policies and procedures for the operation of these facilities. Council provided direction in four areas:

1. Community Access: to provide for renting the kitchen independently; long-term rental commitments for non-prime times only with prime time Friday evening after 5 p.m., all day Saturday and Sunday.;
2. Discounts: proceed with rates as presented except to provide a wider range between technical and non-technical rehearsals;
3. Private Concessionaires and Caterers: continue to explore possibilities and maintain flexibility

with a local vendor preference;

4. Scheduling Priority: proceed with proposed categories as presented.

Fees were developed with a philosophy that rental fees should recover a portion of the costs of operating the facilities. At the same time, it is staff's desire to establish fees which are not only based on cost recovery assumptions, but which also provide more affordable, reduced fees as an incentive for use of the Community and Cultural Center by local residents and groups. To do this, a graduated rate schedule has been developed where possible for each facility use. This schedule is attached to and incorporated in the Resolution as Exhibit A. Council and staff acknowledge the cost recovery goals are high and will provide a status report on a quarterly basis as directed at the Council meeting of July 31, 2002. Wherever possible, rental fees have been separated into the following four categories:

Category A: Official City use or City Sponsored Events are not charged.

Category B: Morgan Hill residents and organizations or businesses which are comprised of at least 60% Morgan Hill Residents receive a 20% discount from market rate.

Category C: Morgan Hill non-profit (501c3) organizations receive a special non-profit rate.

Category D: All others are charged a market rate.

It is staff's intention to begin accepting reservations for the 2003 year on September 3, 2002 and to market the facility at the Taste of Morgan Hill event in late September.

Fiscal Impact: Rental rates are based on revised budget projections reviewed by Council during the budget workshops and reflect cost recovery assumptions.

Recreation Manager Spier distributed a comparison chart of rental rates for various agencies' facilities, and reported that Morgan Hill's rates are comparable or lower than others. She noted that the names for the Community and Cultural Center rooms which she used in this chart are not finalized, but only there for easier reference.

Action: *On a motion by Council Member Sellers, seconded by Council Member Tate, the Council unanimously (5-0) **Adopted** Resolution No. 5609 Establishing Community Center and Playhouse Facility Rental Fees and Scheduling Priorities.*

24) ADOPT ORDINANCE NO. 1571, NEW SERIES

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1571, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Amending Chapter 3.54 (Recreation Fees) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill Regarding Fees for Recreation Services, Including Classes, Facilities and Administrative Processing Fees by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

25) ADOPT ORDINANCE NO. 1572, NEW SERIES

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1572, New Series as follows: An Ordinance of*

the City Council of the City of Morgan Hill Approving a Zoning Amendment and the Approval of a Precise Development Plan for the Capriano/Madrone Crossing Development. The Residential Development Plan Is on a 68 Acre Site Located on the West Side of Monterey Road, South Side of Tilton Avenue, on the East Side of Hale Avenue (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) (Application ZA-00-05: Hale-Glenrock Builders/Shea Homes) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES; None; ABSTAIN: None; ABSENT: None.

26) ADOPT ORDINANCE NO. 1573, NEW SERIES

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1573, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Approving a Zoning Amendment to Establish a New Precise Development Plan for the 98 Acre Mission Ranch Development Located on the South Side of Cochrane Road and East of Mission View Drive in the R-1 (7,000)/RPD Zoning District. (APN's 728-32-001, 002, 003 and 728-33-001). by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES; None; ABSTAIN: None; ABSENT: None.*

27) ADOPT ORDINANCE NO. 1574, NEW SERIES

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1574, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Approving a Zoning Amendment to Establish a New Precise Development Plan for Approximately 18-acres on the West Side of Peet Road from R-1 (9,000) to R-1 12,000 RPD and Incorporating the Area with the Adjoining Coyote Estates Development, Located on the North Side of Cochrane Road and West Side of Peet Road. (APN's 728-35-008, 9 & 10; 728-36-001 & 10) ZA-01-15: Cochrane-coyote Estates by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES; None; ABSTAIN: None; ABSENT: None.*

28) ADOPT ORDINANCE NO. 1575, NEW SERIES

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1575, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Amending the Standards and Criteria and Procedures of the Residential Development Control System as Set Forth in Chapter 18.78 of the Morgan Hill Municipal Code by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES; None; ABSTAIN: None; ABSENT: None.*

29) ADOPT ORDINANCE NO. 1576, NEW SERIES

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1576, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance*

No. 1542, New Series, to Amend the Development Agreement for Application MP-00-02: E. Dunne - Grewal to Allow for a Nine-month Extension of Time (APN 728-11-026) by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: Chang; ABSENT: None.

30) ADOPT ORDINANCE NO. 1577, NEW SERIES

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1577, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Pre-zoning 16 Acres, Located on the East Side of Peet Road - Between Cochrane Road and Half Road from County A-20S to City R-1(20,000). (APN's 728-34-006 & 007) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

31) ADOPT ORDINANCE NO. 1578, NEW SERIES

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1578, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 1464, New Series, to Amend the Development Agreement for Application MP-00-18: Central - Central Park to Allow for a Two-month Extension of Time (APN 726-27-105) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

32) ADOPT ORDINANCE NO. 1579, NEW SERIES

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1579, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Approving an Amended Development Agreement for Phases V & VI of the Mission Ranch Project, Applications MP 00-21 & MP 01-03: Mission View-Dividend (APN's 728-32-001, 002, 003 & 728-33-001) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

None.

ADJOURNED TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to closed session at 9:40 p.m.

RECONVENE FROM CLOSED SESSION

Mayor Kennedy reconvened the meeting at 10:39 p.m.

City Manager Tewes reported the appointment of Mayor Kennedy and Council Member Carr to a

Compensation Sub-committee.

ADJOURNMENT

There being no further business, Mayor/Chairperson Kennedy adjourned the meeting at 10:40 p.m.

MINUTES RECORDED AND PREPARED BY

MOIRA MALONE, Deputy City Clerk